

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CASE NO. 1:18-cv-181-MOC-DLH

NANCY SMITH,
)
)
)
Plaintiff,
)
)
v.
)
ALEX AZAR, in his official capacity
as Secretary of the U.S. Department
of Health and Human Services,
)
Defendant.
)

**DEFENDANT'S UNOPPOSED MOTION FOR EXTENSION OF TIME TO
ANSWER OR OTHERWISE RESPOND TO PLAINTIFF'S
AMENDED COMPLAINT**

Defendant hereby moves for an extension of time to answer or otherwise respond to Plaintiff's Amended Complaint, ECF No. 8, from October 19, 2018, until November 9, 2018. Plaintiff consents to this extension. The reasons supporting Defendant's requested extension are set forth below:

On August 22, 2018, Defendant filed an unopposed motion to extend the time to answer or otherwise respond to Plaintiff's Complaint from August 31, 2018, until November 2, 2018. ECF No. 6. In that motion, Defendant explained, among other things, that this case seeks judicial review of two Medicare Appeals Council

(“MAC”) coverage decisions, and in order to properly respond to the Complaint, the undersigned needed to obtain and review the certified administrative record. *Id.* at 6. At that time, MAC estimated that it would not be able to assemble and certify the administrative record until sometime in mid-September 2018. *Id.* at 7.

On August 23, 2018, this Court issued an Order granting in part Defendant’s motion for an extension, explaining that “[w]hile sensitive to the issues raised by Defendant, it appears that such a lengthy extension may or may not be necessary.” ECF No. 7. The Court set October 19, 2018 as the deadline for Defendant’s answer, but noted that if “[i]f it later appears certain that Defendant will require additional time, the Court will consider a further motion to extend.” *Id.*

Since the Court issued this Order, two developments have occurred in this case that warrant an additional extension. First, the parties are currently engaged in settlement discussions, and Defendant remains hopeful that this case can be resolved before additional time and resources are expended in litigation.

Second, on September 24, 2018, Plaintiff filed an Amended Complaint, ECF No. 8, adding a third and recent MAC coverage decision to the scope of this case. Although Defendant now has the certified administrative record for the two MAC coverage decisions originally at issue, Defendant has requested but does not yet have the certified administrative record for the third MAC coverage decision. MAC

estimates that the process of assembling and certifying the administrative record for the third coverage decision at issue will not be completed until approximately November 2, 2018.

For these reasons, Defendant respectfully requests an extension of time to respond to Plaintiff's Amended Complaint, through and including November 9, 2018. The undersigned has conferred with Plaintiff's counsel, and Plaintiff consents to this requested extension.

Respectfully submitted this 19th day of October, 2018.

R. ANDREW MURRAY
UNITED STATES ATTORNEY

s/Jonathan D. Letzring
JONATHAN D. LETZRING
Assistant United States Attorney
Georgia Bar No. 141651
Room 233, U.S. Courthouse
100 Otis Street
Asheville, North Carolina 28801
Tel: (828) 271-4661
Fax: (828) 271-4327
Email: Jonathan.letzring@usdoj.gov

CERTIFICATE OF SERVICE

I hereby CERTIFY that on the date referenced above, I served a copy of the

foregoing upon Plaintiff's counsel by electronic service through the Court's CM/ECF email notification system.

R. ANDREW MURRAY
UNITED STATES ATTORNEY

s/Jonathan D. Letzring

Jonathan D. Letzring
Assistant United States Attorney